



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 26, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND FACSIMILE AT 248 239 0181

Mr. Jim Bahri, Member Manager
Air Voice Wireless, LLC
2425 Franklin Road
Bloomfield Hills, Michigan 48302-0336

Re: File No. EB-09-SE-168

Dear Mr. Bahri:

This is an official **CITATION** issued to Air Voice Wireless, LLC (“Air Voice”), a reseller of wireless services, pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ for violating the digital wireless handset hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Commission’s Rules (“Rules”), and the public web site posting requirements set forth in section 20.19(h) of the Rules.² We also find that Air Voice violated a Commission order by failing to respond to a Letter of Inquiry (“LOI”) from the Enforcement Bureau. As explained below, continued violations of the Commission’s rules and the Act in this regard will subject Air Voice to monetary forfeitures.

In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.³ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁴ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant standard if they did not come under the *de minimis*

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 20.19(i)(1), (h).

³ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

⁵ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

exception.⁶ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁷

Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁸ The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).⁹ In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.¹⁰ The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹¹ In addition, the Commission instituted a requirement that manufacturers and service providers with publicly-accessible web sites maintain a list of hearing aid-compatible handset models and certain information regarding those models on their web sites.¹² The web site postings, which must be updated within 30 days of a change in a manufacturer's or service provider's offerings, enable consumers to obtain up-to-date hearing aid compatibility information from their service providers.¹³

Air Voice, which offers prepaid wireless service,¹⁴ did not file a hearing aid compatibility status report prior to the January 15, 2009 deadline. The Wireless Telecommunications Bureau referred Air Voice's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for possible enforcement action. On November 4, 2009, the Enforcement Bureau's Spectrum Enforcement Division ("Division") issued Air Voice an LOI.¹⁵ On December 4, 2009, the Division re-mailed the LOI via certified mail, return receipt requested, to the Bloomfield Hills, Michigan address

⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁷ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁸ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

⁹ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹¹ *Id.* ¶ 99.

¹² *Id.* at 3450 ¶ 112.

¹³ *Id.*

¹⁴ See Air Voice web sites: <http://www.airvoicewireless.com/gsmRates.asp> and <http://www.airvoicewireless.com/CDMARates.asp>.

¹⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Atheer Toma, Air Voice, Wireless, LLC (November 4, 2009).

listed on the Air Voice web site.¹⁶ The U.S. Postal Service certified mail return receipt shows that the LOI was received on December 10, 2009. To date, however, Air Voice has not responded to the LOI.

We find that, as a reseller, Air Voice is a service provider subject to the wireless hearing aid compatibility requirements. It appears from Air Voice's web site¹⁷ that it purchases wireless services and wireless handsets and resells the services and handsets to its customers. The Commission has made clear that the hearing aid compatibility requirements apply to service providers such as resellers.¹⁸ Thus, Air Voice is a service provider subject to the wireless hearing aid compatibility requirements. Under section 20.19(i)(1) of the Rules, service providers must file hearing aid compatibility status reports initially on January 15, 2009, and annually thereafter.¹⁹ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether Air Voice is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. Air Voice did not file the January 15, 2009 report, and to date, has not filed its January 15, 2010 status report. Accordingly, Air Voice violated the hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Rules.

Section 20.19(h) of the Rules requires that, beginning January 15, 2009, each manufacturer and service provider that operates a publicly-accessible web site make available on its web site a list of all hearing aid-compatible handset models currently offered, the ratings of those models, and an explanation of the rating system.²⁰ In addition, the Commission has stated that any changes to a manufacturer's or service provider's offerings must be reflected on its public web site listing within 30 days.²¹ These web site postings provide consumers up-to-date hearing aid compatibility information. Based on our review of Air Voice's web site,²² it has not posted the hearing aid compatibility ratings of the various handsets on its web site with an explanation of the rating system in accordance with section 20.19(h) of the Rules.

Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,"²³ and Section 4(j) states that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."²⁴ Likewise, Section 403 grants the Commission "full authority and power to institute an inquiry, on its own motion ... relating to the enforcement of any of the provisions of

¹⁶ See <http://www.airvoicewireless.com/contactus.asp>.

¹⁷ See <http://airvoicewireless.com/gsmPurchaseAirtime.asp> and <http://airvoicewireless.com/CDMAPurchaseAirtime.asp>.

¹⁸ See e.g., *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3424 ¶ 46 (concluding that a three-month extension of deadlines for meeting the handset deployment benchmarks is appropriate with regard to "service providers that are not Tier I nationwide providers, including regional and smaller providers, such as Tier II and Tier III carriers, and other service providers such as resellers and MVNOs.").

¹⁹ 47 C.F.R. § 20.19(i)(1).

²⁰ 47 C.F.R. § 20.19(h).

²¹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

²² We note that Air Voice's web site promotes 24 handset models for use with its wireless services. See <http://www.airvoicewireless.com/gsmPhoneModels.asp> and <http://www.airvoicewireless.com/CDMAPhoneModels.asp>. Thus, it does not appear that Air Voice falls within the *de minimis* exception. See 47 C.F.R. § 20.19(e).

²³ 47 U.S.C. § 154(i).

²⁴ 47 U.S.C. § 154(j).

this Act.”²⁵ Numerous FCC decisions have reaffirmed the Commission’s authority to investigate potential misconduct and to punish those that disregard Commission inquiries.²⁶

Congress has directed the Commission to “ensure reasonable access to telephone service by persons with impaired hearing.”²⁷ In furtherance of that mission, the Division’s LOI directed Air Voice to provide, by December 19, 2009, certain information regarding the company’s compliance with hearing aid compatibility reporting requirements. The U.S. Postal Service certified mail return receipt shows that the LOI was received. To date, the Division has received no response to its LOI. Accordingly, we find that Air Voice violated a Commission order by failing to provide the information requested.

Air Voice is again ordered to provide the information sought by the LOI. A copy of the LOI is enclosed. You must provide the requested information in the manner indicated therein within 15 days of the date of this citation.

Air Voice should take prompt action to ensure that it does not continue to violate the Commission’s wireless hearing aid compatibility rules. Air Voice should also take prompt action to respond to the LOI. If, after receipt of this citation, Air Voice continues to violate the Communications Act or the Commission’s rules or orders in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$150,000 for each such violation or each day of a continuing violation.²⁸

Additionally, Air Voice may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission’s Field Office nearest to your place of business, or (2) a written statement. Air Voice’s response should specify the actions that it is taking to ensure that it does not violate the Commission’s rules governing the filing of hearing aid compatibility status reports in the future.

The nearest Commission field office appears to be the Detroit District Office, in Farmington Hills, Michigan. Please call Jacqueline Johnson at 202-418-2871 if Air Voice wishes to schedule a personal interview. Air Voice should schedule any interview to take place within 30 days of the date of this letter. Air Voice should send any written statement within 30 days of the date of this letter to:

Jacqueline Johnson
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-09-SE-168
Federal Communications Commission
445 12th Street, S.W., Rm. 4-A431
Washington, D.C. 20554

²⁵ 47 U.S.C. § 403.

²⁶ See, e.g., *Connect Paging, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 6303, 6306 (Enf. Bur. 2007) (proposing forfeiture of \$4,000 for failure to respond to an LOI); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7602 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing forfeiture of \$11,000 for failure to provide a complete response to two letters of inquiry); *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 3684, 3688 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing forfeiture of \$11,000 for failure to provide a complete response to two letters of inquiry).

²⁷ 47 U.S.C. § 610(a).

²⁸ See 47 C.F.R. § 1.80(b)(3).

Under the Privacy Act of 1974,²⁹ we are informing Air Voice that the Commission's staff will use all relevant material information before it, including information that Air Voice discloses in its interview or written statement, to determine what, if any, enforcement action is required to ensure Air Voice's compliance with the Communications Act and the Commission's rules and orders.

The knowing and willful making of any false statement, or the concealment of any material fact, in response to this citation is punishable by fine or imprisonment.³⁰

We thank Air Voice in advance for its anticipated cooperation.

Sincerely,

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Enclosure

²⁹ See 5 U.S.C. § 552a(e)(3).

³⁰ See 18 U.S.C. § 1001.